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In re: LYNN G. HILDEN et al. : Decision on Petition for
Serial No. 10/085,069 : Review of a Requirement
Filed : March 01, 2002 : for Restriction

For: RAPID DEFLAGRATION CORD (RDC)
ORDINANCE TRANSFER LINES

This is a decision on the petition under 37 CFR 1.144, received on December 8, 2006 for review of the May 19, 2006 restriction requirement.

The applicant's petition is **DENIED**.

BACKGROUND

The statement of facts can be found on pages 2-6 of applicants petition. In particular, the following is pointed out as being material to this decision.

Claim 33 as amended and subject to the final office action mailed on September 8, 2006 is as follows:

1 33 (previously presented): An ordnance energy transfer system, comprising:
2 a rapid deflagrating cord extending from a first end and a second end of a transfer line, said
3 rapid deflagrating cord having a burn a rate of 1000 to 1500 feet per second; and
4 a first metal tubing hermetically encapsulating said rapid deflagrating cord from said first end
5 to said second end of said transfer line, said first metal tubing being crimped at each end thereof,
6 onto said transfer line at said first and second ends of said transfer line, to hold said rapid
7 deflagration cord in place in said first metal tubing

Claim 54 as presented and subject to the final office action mailed on September 8, 2006 is as follows:

1 54. (previously presented) An ordnance energy transfer system, comprising a transfer line,
2 said transfer line including:
3 an aluminum tube;
4 a rapid deflagrating material filling said aluminum tube, said rapid deflagrating material
5 having a burn a rate of 1000 to 1500 feet per second;
6 a semi-flexible stainless steel tube centrally disposed over said aluminum tube, said stainless
7 steel tube being shorter in length than said aluminum tube, each end portion of said stainless steel
8 tube being crimped onto said aluminum tube to hold said aluminum tube in place, wherein in inner
9 surface area of the non-crimped portion of said stainless steel tube is separated from said aluminum
10 tube by 0.006 inches.

Additionally, it is noted that the examiners response to applicant's traversal is found in the final rejection mailed on September 8, 2006. It is further noted that the examiner had made the restriction requirement final in that Office action.

ARGUMENTS

Applicant argues that claim 33 should have been examined on the merits during the examination of claim 54, alleging that claim 33 is generic.

This argument is unclear since claim 33 was *restricted* from claim 54, not subject to an *election*. The examiner set forth a combination/subcombination restriction between these two groupings of claims. See page 2 of the restriction requirement mailed May 19, 2006. A proper argument to this restriction requirement would be to address the examiners reasoning of separating the inventions via combination/subcombination. Notwithstanding the fact that an election of species was not made, a review of claim 33 cannot be considered to be generic to claim 54 for at least the following reason: In claim 33 the metal tubing is crimped onto the transfer line whereas in claim 54 there is no mention of either of the two tubes being crimped onto the transfer line. Additionally, claim 54 does not require a "deflagration cord" and would read on the deflagration material being directly applied within the aluminum tube.

Applicant argues that claim 66 should be examined as well, however, claim 66 is dependent from claim 33. Applicant must first overcome the restriction requirement discussed above.

Applicant argues that the examiner has not shown a prima facie case indicating a serious burden to the applicant in that the examiner previously searched claim 33 and that the examiner did not explain why other cited subclasses would have to be searched.

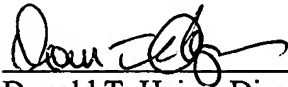
In response, it has been noted that claim 33 as currently presented is broader than claim 33 as previously searched. Note claim 33 no longer requires the details of the fittings over each end of the transfer line, the ferrule or the closure cup. Therefore, the art disregarded during the first search would need to be reexamined in light of the broader claim.

With respect to the examiner not explaining why other subclasses would have to be searched is not recognized as a requirement for burden. An examiner's statement of what areas are to be searched are taken at face value, absent evidence to the contrary by the applicant, of which none has been provided.

The petition is **DENIED**.

The requirement for restriction of May 19, 2006 is seen as being proper and thus the application remains finally rejected as per the final rejection mailed September 9, 2006.

Any questions or comments with respect to this decision should be forwarded to Michael J. Carone at (571) 272-6873.



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mc/snm: 2/21/07

